Version No. 007

University of Melbourne Act 2009

No. 78 of 2009

Version incorporating amendments as at
15 October 2018

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Preamble amended by No. 39/2012 s. 55.

Preamble

The University of Melbourne was created by the Parliament of the fledgling Colony of Victoria as one of several demonstrations of pride, confidence and aspiration for its future.

The preamble to the University Act, 16 Victoria, Act No. 34 declared "...it is expedient to promote sound learning in the Colony of Victoria and with that intent to establish incorporate and endow an University at Melbourne open to all classes and denominations of Her Majesty's subjects...". The University came into being on 11 April 1853.

The Act set in motion the appointment of a Council to manage its staff, affairs and property and enabled the matriculation of students to study for admission to degrees in Arts, Medicine, Law and Music, and the affiliation of colleges and licensing of other establishments as student residences.

The University was endowed with an annual grant from the Treasury.

The administration of any religious test in connection with the obtaining of any "advantage or privilege" of the University was expressly debarred. The University's degree granting powers were subsequently extended to

encompass all disciplines, except divinity.

On 14 March 1859 Queen Victoria granted Letters Patent that the University's degrees in the fields of Arts, Medicine, Law and Music "shall be recognised as Academic distinctions and rewards of Merit and be entitled to rank precedence and consideration in Our United Kingdom and in Our Colonies and possessions and throughout the world as fully as if the said degrees had been granted by any University of Our said United Kingdom".

In 1881 The University of Melbourne was the first university in Australia and one of the first in the world to admit women. The first woman to graduate from the University did so in December 1883.

Subsequently the University and its colleges were enriched by the gifts of many civic-minded Victorians, it forged enduring links with the city's growing cultural and professional institutions. The first anatomy lessons in the southern hemisphere were one of many significant contributions it made to education in the broader region.

In the post Second World War period, it became a much larger institution drawing not only more broadly from across the Victorian population but from across Australia and with a significant proportion of international students.

It mentored the undergraduate school of the Australian National University.

The University granted the first Australian Doctorates of Philosophy in 1948.

Graduates and former students of the University have contributed to inquiry, knowledge, understanding and achievement in many fields and have thereby enriched Victoria, Australia and the world.

The University of Melbourne is a public-spirited institution with a mission that encompasses learning and teaching, research and knowledge transfer, all of which exist for public benefit.

To enable The University of Melbourne to continue and expand its mission, it is expedient to re-enact the law relating to The University of Melbourne in a more modern form.

The Parliament of Victoria therefore enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

(a) to re-enact with amendments the law relating to The University of Melbourne by rationalising obsolete and disparate legislation; and

(b) to provide for a new Act reflecting best practice and a consistent approach to governance and reporting for universities in Victoria.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 January 2011, it comes into operation on that day.

3 Definitions

In this Act—

affiliated college means—

(a) Trinity College, Ormond College, Queen's College, Newman College, University College, St Hilda's College, Whitley College, Janet Clarke Hall or St Mary's College; and

(b) in the case of any other residential college affiliated to or connected with the University under the university statutes, that college;

S. 3 def. of *appointed member* repealed by No. 73/2012 s. 52(1).

* * * * *

Chancellor means the person appointed to the office of Chancellor of the University under section 24;

college means—

(a) an affiliated college; or

(b) a college established in accordance with the university statutes;

Council means the Council established under section 8;

Council appointed member means a member of the Council appointed under section 13;

S. 3 def. of *elected member* repealed by No. 73/2012 s. 52(1), new def. of *elected member* inserted by No. 69/2015 s. 107.

elected member means a member of the Council referred to in section 11(4A);

S. 3 def. of *government appointed member* inserted by No. 73/2012 s. 52(2).

government appointed member means a member of the Council appointed under section 12(1) or (2);

graduate means a person upon whom has been conferred or granted, or who has been admitted without examination to, any degree or other award under any Act relating to the University for the time being in force and whether before or after the passing of this Act;

guidelines means the guidelines approved by the Minister under section 55 and includes any interim

guidelines made under section 55(2);

limited company, in Division 5 of Part 6, means a limited company within the meaning of the Corporations Act;

official member means a member of the Council referred to in section 11(2);

staff means any person employed by the University;

student means—

(a) a person enrolled at the University in a course leading to a degree or other award; or

(b) a person who is designated as a student or is of a class of persons designated as students by the Council;

University means The University of Melbourne referred to in section 4;

university commercial activity means any commercial activity engaged in by, or on behalf of, the University and—

(a) includes any activity declared under section 52 to be a university commercial activity;

(b) does not include any commercial activity declared under section 52 not to be a university commercial activity;

university regulations means the regulations of the University made under Part 5;

university statutes means the statutes of the University made under Part 5;

Vice-Chancellor means the person appointed to the office of Vice-Chancellor and President under section 26 and includes—

(a) an interim Vice-Chancellor appointed under section 26(3); or

(b) an acting Vice-Chancellor;

Visitor means the Visitor under section 22 and includes an acting Visitor.

Part 2—Constitution and governance of the University

Division 1—The University

4 The University of Melbourne

(1) The University of Melbourne is declared to have been established on 11 April 1853 at Melbourne.

(2) The University established in accordance with subsection (1) and as constituted under the **Melbourne University Act 1958** as in force immediately before its repeal—

(a) continues in existence under this Act; and

(b) is a body politic and corporate by the name "The University of Melbourne".

(3) The University consists of—

(a) the Council; and

(b) the staff, other than staff of any class that is designated from time to time by the Council not to be staff for the purposes of this section; and

(c) the graduates; and

(d) the students; and

(e) members of the staff or classes of staff of the affiliated colleges or other bodies, that are designated from time to time by the Council; and

(f) the emeritus professors of the University.

5 Objects of the University

The objects of the University include—

(a) to provide and maintain a teaching and learning environment of excellent quality offering higher education at an international standard;

(b) to provide vocational education and training, further education and other forms of education determined by the University to support and complement the provision of higher education by the University;

(c) to undertake scholarship, pure and applied research, invention, innovation, education and consultancy of international standing and to apply those matters to the advancement of knowledge and to the benefit of the well-being of the Victorian, Australian and international communities;

(d) to equip graduates of the University to excel in their chosen careers and to contribute to the life of the community;

(e) to serve the Victorian, Australian and international communities and the public interest by—

(i) enriching cultural and community life;

(ii) elevating public awareness of educational, scientific and artistic developments;

(iii) promoting critical and free enquiry, informed intellectual discourse and public debate within the University and in the wider society;

(f) to use its expertise and resources to involve Aboriginal and Torres Strait Islander people of Australia in its teaching, learning, research and advancement of knowledge activities and thereby contribute to —

(i) realising Aboriginal and Torres Strait Islander aspirations; and

(ii) the safeguarding of the ancient and rich Aboriginal and Torres Strait Islander cultural heritage;

(g) to provide programs and services in a way that reflects principles of equity and social justice;

(h) to confer degrees and grant other awards;

(i) to utilise or exploit its expertise and resources, whether commercially or otherwise.

6 General powers and functions of University

(1) The University—

(a) is a body politic and corporate with perpetual succession; and

(b) may sue and be sued in its corporate name; and

(c) subject to this Act, may acquire, hold and dispose of real and personal property.

(2) The University may do and suffer all acts and things that a body corporate may by law do and suffer.

(3) Without limiting subsection (1) or (2), the University—

(a) may enter into contracts;

(b) may fix fees and charges;

(c) may employ persons in academic, teaching or other positions in the University on any terms and conditions that it determines and may terminate the employment of any member of staff employed by it;

(d) subject to any guidelines, may be a member of a company, association, trust or partnership;

(e) subject to any guidelines, may form or participate in the formation of a

company, association, trust or partnership;

(f) subject to any guidelines, may enter into a joint venture or joint undertaking with any other person or persons;

(g) has any other powers and functions conferred on it by or under—

(i) this Act or any other Act; or

(ii) any university statute or university regulation;

(h) may do anything else necessary or convenient to be done for or in connection with its objects, powers and functions.

(4) The University may exercise its powers and functions—

(a) within and outside Victoria; and

(b) outside Australia.

7 Common seal

(1) The University has a common seal.

(2) The common seal of the University must be kept and used as directed by the Council or in any manner authorised by the university statutes or university regulations.

(3) All courts, tribunals and other persons acting judicially—

(a) must take judicial notice of the common seal of the University on a document; and

(b) until the contrary is proved, must presume that it was duly affixed.

Division 2—The Council

8 The Council

(1) There is established a Council.

(2) The Council—

(a) is the governing body of the University;

(b) has the general direction and superintendence of the University;

(c) subject to this Act, the university statutes and university regulations, may exercise all the powers, functions and duties of the University.

(3) The primary responsibilities of the Council include—

(a) appointing and monitoring the performance of the Vice-Chancellor as chief executive officer of the University;

(b) approving the mission and strategic direction of the University and its annual budget and business plan;

(c) overseeing and reviewing the management of the University and its performance;

(d) establishing policy and procedural principles for the operation of the University consistent with legal requirements and community expectations;

(e) approving and monitoring systems of control and accountability of the University, including those required to maintain a general overview of any entity over which the University has control within the meaning of section 3 of the **Audit Act 1994**;

(f) overseeing and monitoring the assessment and management of risk across the University, including university commercial activities;

(g) overseeing and monitoring the academic activities of the University;

(h) approving any significant university commercial activities.

9 Powers and functions of the Council

(1) The Council has the following functions and powers—

(a) to appoint the Chancellor, any Deputy Chancellor and the Vice-Chancellor;

(b) to establish policies relating to the governance of the University;

(c) to oversee and review the management of the University and its performance;

(d) to oversee the management and control of the property and business affairs of the University;

(e) to oversee the management and control of the University's finances;

(f) any other powers and functions conferred on it by or under—

(i) this Act or any other Act; or

(ii) any university statute or university regulation;

(g) the power to do anything else necessary or convenient to be done for or in connection with its powers and functions.

(2) Without limiting subsection (1), the Council—

(a) may determine what persons or classes of persons constitute the academic staff of the University for the purposes of this Act;

(b) may designate a diploma or certificate to be awarded to students as—

(i) a postgraduate diploma or postgraduate certificate; or

(ii) a graduate diploma or graduate certificate; or

(iii) an undergraduate diploma or undergraduate certificate;

(c) may designate persons or classes of persons as students;

(d) may designate as members of the University persons or classes of persons who are members of the staffs of residential colleges affiliated to or connected with the University under section 21;

(e) has, and is deemed always to have had, power to establish and conduct the repertory company known as The Melbourne Theatre Company.

10 Power to confer degrees and grant other awards

(1) Subject to the university statutes and university regulations, the Council has power, and is deemed always to have had power, to confer any degree or grant any other award in any discipline, except divinity.

(2) The university statutes or university regulations may provide—

(a) for the conferral, without examination, of any degree or the granting, without examination, of any other award referred to in subsection (1) on or to any person who has graduated from a university; and

(b) for the conferral honoris causa of any degree or granting honoris causa of any other award referred to in subsection (1) on or to any person, whether or not he or she has graduated from a university.

(3) If the university statutes so provide, the Council may revoke any degree conferred or other award granted by the University, whenever conferred or granted.

(4) The power of the Council under subsection (3) is to be exercised in the circumstances and manner prescribed in the university statutes.

S. 11 substituted by No. 73/2012 s. 53. S. 11(1) substituted by No. 69/2015 s. 108(1).

11 Council membership

(1) The Council consists of the fixed number of members being—

(a) the official members; and

(b) a fixed number of at least 4 government appointed members; and

(c) a minimum of one or any other greater fixed number of Council appointed members; and

(d) the elected members.

(2) The official members of the Council are —

(a) the Chancellor;

(b) the Vice-Chancellor;

(c) the president (however designated) of the academic board or its equivalent.

(3) The government appointed members are—

(a) a minimum of one or any other greater fixed number of persons appointed by the Governor in Council under section 12(1); and

(b) a minimum of one or any other greater fixed number of persons

appointed by the Minister under section 12(2).

(4) The Council appointed members are the persons appointed by the Council under section 13.

S. 11(4A) inserted by No. 69/2015 s. 108(2).

(4A) The elected members are—

(a) one or more persons elected by and from the staff of the University in accordance with the university statutes and any university regulations; and

(b) one or more persons elected by and from the students of the University in accordance with the university statutes and any university regulations.

(5) The number of government appointed members must be equal to or greater than the number of Council appointed members.

S. 11(5A) inserted by No. 69/2015 s. 108(3).

(5A) Of the members referred to in subsection (1)(b) and (c)—

(a) at least 2 must be persons with financial expertise with relevant qualifications or experience in financial management; and

(b) one must be a person with commercial expertise at a senior level.

(6) In this section a reference to a fixed number of members is a reference to the number of members fixed by Order in Council under section 63.

Note to s. 11 amended by No. 69/2015 s. 108(4).

Note

Section 11A provides for the composition of the Council until an Order in Council is made under section 63.

S. 11A inserted by No. 69/2015 s. 109.

11A Council membership pending Order under section 63

(1) Until an Order in Council is made under section 63 for the purposes of section 11, the Council consists of at least 13 but no more than 21 persons being—

(a) the official members; and

(b) at least 4 government appointed members; and

(c) at least 4 Council appointed members; and

(d) the elected members.

(2) The official members of the Council are —

(a) the Chancellor; and

(b) the Vice-Chancellor; and

(c) the president (however designated) of the academic board or its equivalent.

(3) The government appointed members are—

(a) at least 3 persons appointed by the Governor in Council under section 12(1); and

(b) one person appointed by the Minister under section 12(2).

(4) The Council appointed members are the persons appointed by the Council under section 13.

(5) The number of government appointed members must be equal to or greater than the number of Council appointed members.

(6) Of the members referred to in subsection (1)(b) and (c)—

(a) at least 2 must be persons with financial expertise with relevant qualifications or experience in financial management; and

(b) one must be a person with commercial expertise at a senior level.

S. 12 (Heading) amended by No. 73/2012 s. 56(1).

12 Government appointed members

S. 12(1) amended by No. 73/2012 s. 56(2).

(1) On the recommendation of the Minister, the Governor in Council, by instrument, may appoint persons to the Council as government appointed members.

S. 12(2) amended by No. 73/2012 s. 56(3).

(2) The Minister, by instrument, may appoint persons to the Council as government appointed members.

(3) In making a recommendation under subsection (1) or an appointment under subsection (2), the Minister must have regard to appointing members to the Council who have—

(a) the knowledge, skills and experience required for the effective working of the Council;

(b) an appreciation of the values of a university relating to teaching, research, independence and academic freedom;

(c) the capacity to recognise the needs of the external community served by the University.

S. 12(4) amended by No. 73/2012 s. 56(2).

(4) Not more than 2 members of the Council who are government appointed members may be persons whose normal place of residence is outside Australia.

S. 12(5) amended by No. 73/2012 s. 56(4).

(5) A government appointed member may be removed at any time—

(a) in the case of a member appointed under subsection (1), by the Governor in Council; and

(b) in the case of a member appointed under subsection (2), by the Minister.

13 Council appointed members

(1) The Council may appoint persons to the Council as Council appointed members.

(2) In making an appointment under subsection (1), the Council must have regard to appointing members to the Council who have—

(a) the knowledge, skills and experience required for the effective working of the Council;

(b) an appreciation of the values of a university relating to teaching, research, independence and academic freedom;

(c) the capacity to recognise the needs of the external community served by the University.

(3) Not more than 2 members of the Council who are Council appointed members may be persons whose normal place of residence is outside Australia.

14 Limitations on membership

(1) A person who is a member of the Parliament of Victoria or of the Commonwealth or of any other State or Territory must not be a member of the Council.

(2) A person is ineligible to be a member of the Council if the person—

(a) is or becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act; or

(b) is, or has been, convicted or found guilty of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.

15 Responsibilities of Council members

(1) A member of the Council must act reasonably to ensure that the Council carries out its functions and exercises its powers appropriately, effectively and efficiently.

(2) In exercising his or her responsibilities and carrying out his or her functions and duties, a member of the Council must—

(a) act in good faith, honestly and for proper purposes consistent with the objects and interests of the University;

(b) exercise reasonable skill, appropriate care and diligence; and

(c) take reasonable steps to avoid all conflicts of interest unless they are declared in accordance with clause 11 of Schedule 1.

(3) A member of the Council must not make improper use of his or her position as a member, or of information acquired because of his or her position as a member, to gain, directly or indirectly, an advantage for the member or for another person.

16 Remuneration

(1) Subject to subsection (2), at the discretion of the Council, a member of the Council other than a member who holds—

(a) a full-time office on the staff of the University; or

(b) a full-time office under the Crown in any of its capacities; or

(c) a full-time office in a statutory authority—

may be paid the remuneration and fees that are fixed from time to time by the Minister for that member.

(2) The following persons are not entitled to be paid or to receive any remuneration, fees, allowances or expenses in respect of their membership of the Council—

(a) the Chief Justice and other Justices of the High Court of Australia;

(b) the Chief Justice and other Judges of the Supreme Court;

(c) a judge of any other court in Victoria or another State or Territory.

17 Membership and procedure of Council

Schedule 1 has effect with respect to the membership and procedure of the Council.

18 Power to delegate

(1) Subject to subsection (2), the Council, by instrument, may delegate its powers or functions under this Act to—

(a) a member of the Council; or

(b) a committee of the Council; or

(c) any member of staff of the University; or

(d) the academic board or its equivalent; or

(e) any other entity prescribed by the university statutes.

(2) The Council must not delegate—

(a) this power of delegation; or

(b) the power to appoint officers under section 9(1)(a); or

(c) the power to make university statutes.

Note

See also sections 41A, 42 and 42A of the **Interpretation of Legislation Act 1984**.

19 Indemnities

The University must indemnify and keep indemnified—

(a) each member of the Council; and

(b) any member of a committee constituted or appointed by resolution of the Council or by or under a university statute or university regulation; and

(c) any member of the academic board or its equivalent—

against all actions or claims (whether arising during or after the term of office of that member) in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of any power or duty conferred or imposed—

(d) on the Council, any committee or the academic board or its equivalent; or

(e) on any member or members of the Council, committee or the academic board or its equivalent by or under this Act.

Part 3—Persons and bodies connected with the University

20 Academic board or its equivalent

Subject to the university statutes and university regulations, the Council—

(a) must establish an academic board or its equivalent; and

(b) must determine—

(i) the powers, functions and membership of the academic board or its equivalent; and

(ii) the method of appointment of a president (however designated) of the academic board or its equivalent.

21 Faculties, departments, divisions, centres, units, schools, institutes and colleges

(1) There are the faculties, departments, divisions, centres, units, schools and institutes of the University (however designated) that the Council from time to time specifies.

(2) Nothing in this section limits the name by which any faculty, department, division, centre, unit, school or institute or any head of any faculty, department, division, centre, unit, school or institute may be known.

(3) The Council may establish colleges of the University by university statute.

(4) By university statute, the Council may provide for the affiliation to, or connection with, the University of any college or educational establishment to which the governing body of that college or establishment consents.

22 Visitor

(1) The person who holds the office of Governor of the State is the Visitor of the University.

(2) Subject to subsection (3), the Visitor has power to do anything necessary to carry out the duties and functions of the Visitor.

(3) The Visitor—

(a) has ceremonial functions only; and

(b) has no powers, duties or functions with respect to the resolution of disputes or any other matter concerning the affairs of the University, other than a matter involving the exercise of ceremonial functions only.

23 Acting Visitor

(1) The Visitor may authorise a person to act as Visitor in his or her place—

(a) in relation to any particular matter concerning the affairs of the University; or

(b) during any period when the Visitor is absent or unable to act.

(2) The person who is authorised to act as Visitor under subsection (1) has all the powers, duties and functions of the Visitor to the extent, or for the period of, the authorisation under that subsection.

Part 4—Officers of the University

24 Chancellor

(1) There is a Chancellor of the University.

(2) The Council must appoint a person to the office of Chancellor of the University when there is a vacancy in that office.

(3) A person may be appointed Chancellor whether or not the person is a member of the Council.

(4) The Chancellor holds office—

(a) for a term not exceeding 5 years fixed by the Council in accordance with the university statutes and is eligible for reappointment; and

(b) on the conditions determined by the Council in accordance with the university statutes and university regulations.

25 Deputy chancellor

(1) There is at least one deputy chancellor of the University.

(2) The Council must appoint a person to be a deputy chancellor of the University when there is a vacancy in that office.

(3) A deputy chancellor holds office—

(a) for a term not exceeding 5 years fixed by the Council in accordance with the university statutes and is eligible for reappointment; and

(b) on the conditions determined by the Council in accordance with the university statutes and university regulations.

(4) A deputy chancellor is to act as Chancellor—

(a) in the absence of the Chancellor; or

(b) during any vacancy in the office of Chancellor; or

(c) during the inability of the Chancellor to act; or

(d) at any other time with the consent of the Chancellor.

(5) When acting as Chancellor, a deputy chancellor, has all the powers and duties of the Chancellor.

26 Vice-Chancellor

(1) There is a Vice-Chancellor and President of the University.

(2) The Council must appoint a person to the office of Vice-Chancellor when there is a vacancy in that office.

(3) Despite subsection (2) and section 27(1), pending the appointment of a Vice-Chancellor under subsection (2), the Council may make an interim appointment of a person to a vacancy in the office of Vice-Chancellor.

(4) An interim appointment under subsection (3) is for the period

specified in the appointment, being a period not exceeding 12 months.

(5) The Vice-Chancellor's terms of appointment are determined by the Council in accordance with the university statutes and university regulations.

(6) Subject to this Act, the Vice-Chancellor —

(a) is the chief executive officer of the University generally responsible for the conduct of the University's affairs in all matters; and

(b) has the functions, powers and duties conferred or imposed upon him or her—

(i) by or under this Act or any other Act; or

(ii) by or under any university statute or university regulation; or

(iii) by the Council.

(7) Subject to this Act, the university statutes and the university regulations, the Vice-Chancellor may delegate any of his or her functions, powers and duties to—

(a) any appropriately qualified member of staff; or

(b) any committee established from appropriately qualified members of staff.

27 Other officers

(1) In accordance with the university statutes and university regulations, during the absence of the Vice-Chancellor, the Council may appoint an acting Vice-Chancellor.

(2) In accordance with the university statutes and university regulations, the Council may appoint one or more deputy vice-chancellors who have the functions, duties and powers conferred by the university statutes and university regulations.

Part 5—University statutes and university regulations

28 Council may make university statutes and university regulations

Subject to this Act, the Council may make any university statutes and university regulations with respect to any matter relating to—

(a) the University; and

(b) any person—

(i) entering or on land or other property of the University; or

(ii) using University facilities.

29 Specific subject matter for university statutes and university regulations

(1) Without limiting section 28, university statutes and university regulations may be made for or with respect to—

(a) the organisation, management and good government of the University;

(b) the academic board or its equivalent;

(c) employment of staff;

(d) retired staff members;

(e) discipline;

(f) academic dress and academic titles, ranks or positions;

(g) the common seal;

(h) intellectual property;

(i) examinations;

(j) graduates;

(k) students;

(l) student loans;

(m) courses of study;

(n) credit in courses of the University for work done elsewhere;

(o) degrees and other awards;

(p) fees charged by the University;

(q) trusts and endowments;

(r) organisations, amenities and services which are not of an academic nature;

(s) property, including buildings and staff housing;

(t) traffic, including parking on University property;

S. 29(1)(u) substituted by No. 69/2015 s. 110(a).

(u) elections conducted by the University including electoral systems and procedures, voting methods, voter and candidate eligibility and dispute resolution;

S. 29(1)(ua) inserted by No. 69/2015 s. 110(b).

(ua) the elected members of the Council including—

(i) fixing the number of each category of elected member; and

(ii) making provision for any matter of a transitional nature consequent to altering the fixed number of each category of elected member under subparagraph (i);

S. 29(1)(ub) inserted by No. 69/2015 s. 110(b).

(ub) training and support of the members of the Council;

(v) research, development, consultancy, university commercial activities and other services undertaken by the University for commercial organisations, public bodies or individuals;

(w) recognition of institutions or bodies at which—

(i) work is undertaken by students of the University for the purpose of satisfaction of degree requirements of the University; or

(ii) research is or may be undertaken by teaching or research staff of the University; or

(iii) any other work is undertaken that assists the University to attain any of its objects;

(x) teaching, research and continuing education projects and university commercial activities within and outside Victoria undertaken by the University jointly with commercial organisations, public bodies or individuals;

(y) establishment and operation of colleges and affiliated colleges;

(z) the affiliation with the University of any colleges, halls of residence for students, educational, commercial,

cultural, sporting or other institution, organisation or body if —

(i) the affiliation would assist in attaining any of the objects of the University; and

(ii) the governing body of the college, hall of residence, institution, organisation or body has consented to the affiliation.

(2) Without limiting section 28, the Council may make university statutes for or with respect to—

(a) the establishment by the Council of hostels and halls of residence for students; and

(b) the management, control and closing of any hostels and halls; and

(c) the arrangement of accommodation for students; and

(d) exercising, by agreement with the owner or governing body of any hostel or hall not established by the Council, of powers of control and management in relation to any such hostel or hall.

(3) The Council may make university statutes for the affiliation with the University of any educational,

commercial, cultural, sporting or other institution, organisation or body if—

(a) the affiliation would assist in attaining any of the objects of the University; and

(b) the governing body of the institution, organisation or body has consented to the affiliation.

(4) A university statute made under subsection (2) or (3) must not affect the religious observances or regulations applying in a college, educational establishment or premises referred to in this section.

(5) Without limiting section 28, university statutes and university regulations may be made for or with respect to any other matter in relation to which—

(a) the Council may make university statutes or university regulations; or

(b) it is necessary or expedient to make university statutes or university regulations for the good governance of the University or for the management of its affairs.

30 University statutes may provide for making of university regulations

(1) A university statute made by the Council may provide for the making of university regulations for or with respect to prescribing or providing for any matter or thing for the purposes of the university statute, either by—

(a) the Council; or

(b) if the university statutes authorise it, by—

(i) the Vice-Chancellor; or

(ii) the academic board or its equivalent.

(2) A university statute made by the Council may provide for—

(a) the manner of making and promulgation of a university regulation;

(b) the revocation or amendment of a university regulation.

31 Manner of making university statutes and university regulations

(1) A university statute made by the Council must—

(a) be in writing; and

(b) have the common seal of the University affixed; and

(c) be submitted to the Minister for approval.

(2) The Council must ensure that university statutes and university regulations are readily available to the public by whatever means the Council considers appropriate.

(3) The Council may revoke or amend any university statute in the same manner and subject to the same conditions and limitations as the university statute was made.

Note

See also section 27 of the **Interpretation of Legislation Act 1984**.

(4) The Vice-Chancellor may revoke or amend any university regulation made under section 30(1)(b)(i).

(5) The academic board or its equivalent may revoke or amend any university regulation made under section 30(1)(b)(ii).

Note

Section 30 empowers a university statute to provide for the revocation or amendment of a university regulation.

32 Commencement

(1) A university statute comes into operation on the day on which the Minister approves it unless a later commencement day is specified in the university statute.

(2) A university regulation comes into operation on—

(a) the day on which it is promulgated in accordance with the university statute under which it is made; or

(b) if a later day is specified in the university regulation, that later day.

33 Application of laws to university statutes and university regulations

(1) A university statute or university regulation is not a statutory rule for the

purposes of the **Subordinate Legislation Act 1994**.

(2) A university statute or university regulation is not a subordinate instrument for the purposes of the section 32 of the **Interpretation of Legislation Act 1984**.

34 Judicial notice of university statute or university regulation

(1) The production of a verified copy of a university statute under the common seal of the University is sufficient evidence of its making and authenticity —

(a) in all courts and tribunals; and

(b) before all persons acting judicially.

(2) The production of a verified copy of a university regulation under the common seal of the University is sufficient evidence of its making and authenticity—

(a) in all courts and tribunals; and

(b) before all persons acting judicially.

Part 6—Property, finance and commercial activities

Division 1—Property generally

35 Powers relating to property

The University—

(a) may acquire by purchase, gift, grant, bequest or devise any property for the purposes of this Act; and

(b) may agree to and carry out any conditions of any such purchase, gift, grant, bequest or devise; and

(c) has control and management of all property vested in or acquired by the University; and

(d) may dispose of property of the University.

Division 2—Land

36 Acquisition of land

(1) After consultation with the University, the Minister may acquire any land for the purposes of, or in connection with, the University.

(2) Land acquired under subsection (1) may be acquired by agreement or compulsorily.

(3) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—

(a) the **University of Melbourne Act 2009** is the special Act; and

(b) the Minister is the Authority.

(4) Any land acquired by agreement under this Act by the Minister—

(a) is to be conveyed or transferred to the Crown; and

(b) may be dealt with as unalienated Crown land, despite anything to the contrary in any Act.

(5) Any land acquired compulsorily under this Act by the Minister—

(a) vests in the Crown under section 24 of the **Land Acquisition and Compensation Act 1986**, despite anything to the contrary in that section; and

(b) may be dealt with as unalienated Crown land, despite anything to the contrary in any Act.

(6) Despite anything to the contrary in the **Land Act 1958**, any unalienated Crown land may—

(a) be granted in fee simple to the University or to any educational institution affiliated or connected with the University—

(i) for the consideration (if any) that the Governor in Council determines; and

(ii) subject to the conditions, limitations and restrictions that the Governor in Council determines; or

(b) be reserved under the **Crown Land (Reserves) Act 1978** either permanently or temporarily as a site for the purposes of the University or any such institution.

37 Disposal of land

(1) Without the prior approval of the Minister, the University must not alienate any land granted in fee simple under section 36(6)(a) whether—

(a) the alienation of the land is in fee simple or for a lesser estate or interest; or

(b) the alienation of the land is—

(i) total or partial; or

(ii) subject to conditions.

(2) Subsection (1) does not apply to a leasehold interest not exceeding 21 years.

(3) Without the prior approval of the Minister, the University must not alienate any interest in fee simple in any land owned by the University, other than land referred to in section 36(6)(a), if the sum of the consideration

for the transfer or conveyance of that interest exceeds—

(a) $5 000 000; or

(b) any other greater amount that the Minister fixes by notice published in the Government Gazette.

(4) Without the prior approval of the Minister, the University must not grant a lease for a term exceeding 21 years of any land owned by the University other than land referred to in section 36(6)(a).

(5) Subject to section 38, this section has effect despite any Act or law to the contrary, including any rule of common law.

38 Disposal of investment lands

Sections 37(3) and 37(4) do not apply to any land or any interest in land which, in the opinion of the Council, was acquired for investment purposes.

Division 3—Trust funds and related matters

39 Creation and administration of trust funds and other funds

(1) Subject to this Act, the University may create and administer—

(a) any trust fund; or

(b) any funds for any other purpose.

(2) This section applies with any necessary modifications to the governing body of a college.

40 Establishment of investment common funds

(1) The University may establish one or more investment common funds for the collective investment of any trust funds and other funds held by or in the custody of the University.

(2) Without liability for breach of trust, the University may bring into or withdraw from any investment common fund the whole or any part of any trust fund or other fund held by or in the custody of the University.

(3) Subsection (2) applies despite any direction to the contrary, whether express or implied, contained in the trust instrument.

(4) This section applies with any necessary modifications to the governing body of a college.

41 Distribution of income of investment common funds

(1) Subject to subsection (2), the University must periodically distribute the income of each investment common fund among the funds participating in the pool having regard to the extent of the participation by each fund during the relevant accounting period.

(2) From time to time, the University, if it considers it expedient to do so, may—

(a) add some portion of the income of each investment common fund to the capital of the common fund; or

(b) establish a fund or funds as a provision against capital depreciation or reduction in income.

(3) This section applies with any necessary modifications to the governing body of a college.

42 Commissions etc.

(1) Out of the annual income of a trust fund in an investment common fund, the University may periodically deduct an amount not exceeding 5% of the annual income of that trust fund as commission for the administration of that trust fund.

(2) The commission deducted in accordance with subsection (1) is to be received and accepted by the University as full payment to it for the costs of administration of the trust fund.

(3) The University must not make any other charges on the trust fund in addition to the commission received under subsection (2) except in accordance with the trust instrument.

(4) This section applies with any necessary modifications to the governing body of a college.

43 Delegation

Despite the terms of any trust, the Council may delegate all or any of its powers, functions and duties as trustee under this Division, other than this power of delegation, to—

(a) a committee of the Council; or

(b) a designated staff member of the University.

Division 4—Finance

44 Revenue

Subject to this Act, all fees and all other money received by or on behalf of the University under this Act or otherwise must be applied by the University solely for the objects or purposes of the University.

45 Borrowing powers

(1) Subject to this Act, for the purpose of carrying out or performing any of its powers, authorities, duties or functions, the University may—

(a) borrow money at interest by way of mortgage, overdraft with an ADI or otherwise; or

(b) without limiting paragraph (a)—

(i) obtain financial accommodation within the meaning of section 3 of the **Borrowing and Investment Powers Act 1987**; or

(ii) enter into and perform financial arrangements within the meaning of that section of that Act.

Note

Section 38 of the **Interpretation of Legislation Act 1984** defines ***ADI*** as an authorised deposit-taking institution

within the meaning of the Banking Act 1959 of the Commonwealth.

(2) Subsection (1) applies within the limits and upon the conditions as to security and otherwise as the Treasurer, from time to time, approves after consultation with the Minister.

46 Investments

(1) Subject to this Act, the University may invest any money of the University in any manner of investment authorised by the Council.

(2) Any endowment funds held by the University in accordance with specific trusts as to the payment of the income from those funds in perpetuity may be invested for the time being in any manner in which moneys may be invested under the **Trustee Act 1958**.

47 Audit of income and expenditure of University

The Council must arrange for an audit of the income and expenditure of the University, in accordance with the guidelines.

Division 5—Joint ventures and companies

48 Corporations and joint ventures

(1) For the purposes of one or more of the objects set out in subsection (2), the University may, in accordance with the guidelines—

(a) be a member of a company, association trust or partnership;

(b) form, manage or participate in the formation of a company, association, trust or partnership;

(c) enter into a joint venture or joint undertaking with another person or persons.

(2) For the purposes of subsection (1), the objects are—

(a) making available facilities for study, research or education;

(b) providing teaching, research, development, consultancy or other services for public or private entities;

(c) assisting or engaging in the development or promotion of the University's research or the application or use of the results of that research;

(d) preparing, publishing, distributing or licensing the use of literary or artistic work, audio or audiovisual material or computer software;

(e) exploiting commercially a facility or resource of the University, including but not limited to, study, research or knowledge developed by or belonging to the University,

whether alone or with another entity;

(f) seeking or encouraging gifts to the University or for the University's purposes;

(g) any other object, consistent with this Act, that the Council considers appropriate in the circumstances.

49 Audit of limited company

(1) If the University—

(a) forms, participates in the formation of, or is a member of, a limited company to which section 48 applies; and

(b) has control, within the meaning of section 3 of the **Audit Act 1994**, of that company—

the accounts of the limited company must be audited annually by the Auditor-General.

(2) The requirements of subsection (1) are in addition to the requirements of the Corporations Act.

50 Audit of other companies

(1) If the University—

(a) forms, participates in the formation of, or is a member of, a company under section 48 that is not

incorporated or taken to be incorporated under the Corporations Act; and

(b) has control, within the meaning of section 3 of the **Audit Act 1994**, of that company—

the accounts of the company must be audited annually by the Auditor-General.

(2) The Auditor-General is not required to audit the accounts of a company incorporated or formed in a place outside Australia under this section if—

(a) under the law applying to that company in that place, the Auditor-General cannot be appointed as auditor of the company; or

(b) in the Auditor-General's opinion, it is impracticable or unreasonable for the Auditor-General to audit, or be required to audit, the accounts.

51 Audits under sections 49 and 50 generally

(1) For the purposes of an annual audit under section 49 or 50—

(a) the Auditor-General and any person assisting the Auditor-General has, with respect to the accounts of the limited company or other company, as the case requires, all the powers conferred on the Auditor-General by any law relating to the auditing of public accounts;

(b) the limited company or other company, as the case requires, must within 3 months after the company's accounts are balanced cause a statement of accounts to be prepared and submitted to the Auditor-General;

(c) the statement of accounts must—

(i) be prepared in the manner and in the form approved by the Minister administering Part 7 of the **Financial Management Act 1994**; and

(ii) present fairly the financial transactions of the limited company or other company during the year and the financial position of the company at the end of the year;

(d) the Auditor-General must forward to the Minister administering Part 7 of the **Financial Management Act 1994** a copy of the audited annual accounts.

(2) Without limiting subsection (1)(a) or any powers of the Auditor-General under the **Audit Act 1994**, the Auditor-General and any person assisting the Auditor-General—

(a) has right of access at all times to the books, securities, accounts and vouchers of the limited company or other company; and

(b) may require from an officer or employee of the limited company, other company or the University any information, assistance and explanations necessary for the performance of the duties of the Auditor-General or person in relation to the audit.

(3) The University must pay to the Consolidated Fund an amount to be determined by the Auditor-General to defray the costs and expenses of an audit under section 49 or 50.

(4) Sections 49 and 50 do not apply to any limited company or other company of which the University has ceased to be a member before the last preceding annual audit.

Division 6—Guidelines

52 Declarations—*university commercial activity*

S. 52 amended by No. 71/2010 s. 71(Sch. item 7.1).

After consultation with the University, the Minister may, by order published in the Government Gazette, declare—

(a) an activity to be a university commercial activity for the purposes of paragraph (a) of the definition of ***university commercial activity***;

(b) a commercial activity not to be a university commercial activity for the purposes of paragraph (b) of the definition of ***university commercial activity***.

53 University may submit guidelines to the Minister

(1) The University may submit to the Minister for approval guidelines for or with respect to—

(a) the carrying out of university commercial activities;

(b) auditing under this Part;

(c) finance and property matters;

(d) any other matter related to the exercise of any functions, powers or duties under this Part;

(e) any combination of the matters referred to in paragraphs (a) to (d).

(2) Without limiting the content of the guidelines, the guidelines may provide for or with respect to—

(a) requirements for feasibility and due diligence assessment;

(b) requirements for identifying appropriate governance and administrative arrangements, including legal structures and audit requirements;

(c) requirements for undertaking risk assessment and risk management measures;

(d) maintaining any register of university commercial activities or the publication of information relating to university commercial activities in annual reports;

(e) regulating the delegation by the Council of any of its functions under this Act in connection with the University's commercial activities;

(f) the rights and responsibilities of members of the Council in relation to commercialisation for the purposes of avoiding real or apparent conflicts of interest;

(g) any other matters the Council considers appropriate.

54 Consultation

Before approving or making any guidelines, the Minister must consult with—

(a) the Treasurer; and

S. 54(b) amended by No. 71/2010 s. 71(Sch. item 7.2).

(b) the University—

on the final form and content of the guidelines.

55 Ministerial approval of guidelines and power to make guidelines

(1) On the submission under section 53 by the University of guidelines for approval, the Minister may—

(a) approve the guidelines; or

(b) refer the guidelines back to the University for amendment in accordance with any comments the Minister may make; or

(c) refuse to approve the guidelines.

(2) The Minister may make interim guidelines for or with respect to the matters specified in section 53 pending —

(a) the submission of guidelines by the University; or

(b) the approval by the Minister of guidelines submitted by the University.

(3) Unless sooner revoked by the Minister, interim guidelines made under subsection (2) operate until the Minister approves guidelines submitted by the University.

56 Publication and availability

(1) The Minister—

(a) must cause the guidelines to be published in the Government Gazette; and

(b) may publish the guidelines on the Internet.

(2) The guidelines take effect—

(a) on the date of publication in the Government Gazette; or

(b) such later date as is specified in the guidelines.

57 Guidelines and university statutes

The guidelines must not be inconsistent with a university statute or university regulation.

58 Council to ensure compliance

(1) The Council must ensure that any guidelines are complied with in carrying out the activities, functions, powers or duties to which the guidelines relate.

(2) The failure of the Council to ensure compliance with a guideline in relation to a university commercial activity does not of itself invalidate any commercial agreement entered into, or action taken, by the Council or the University in respect of a university commercial activity to which the guideline relates.

59 Reports to Minister

The Minister may request the University to provide a report on—

(a) university commercial activities generally; or

(b) any particular university commercial activity; or

(c) any aspect of a university commercial activity.

60 Referral to Auditor-General

(1) The Minister may refer to the Auditor-General for investigation and report to the Minister—

(a) a university commercial activity; or

(b) any aspect of a university commercial activity.

(2) A referral under subsection (1) may be made whether or not the university

commercial activity was the subject of a report under section 59.

Part 7—General

61 Fine is civil debt recoverable summarily

A fine imposed under the university statutes or university regulations on a member of the staff of the University, a student or any person entering or on land or other property of the University or using University facilities is a civil debt recoverable summarily by the University in any court of competent jurisdiction.

62 Certificate is evidence of amount of fine

A certificate in writing—

(a) signed by the Vice-Chancellor or a person appointed by him or her for the purpose as to the amount of a fine imposed under the university statutes or university regulations on a member of the staff of the University, a student or any person entering or on land or other property of the University or using University facilities; and

(b) giving particulars of the date of, and reasons for, the imposition of the fine—

is prima facie evidence of the facts stated in the certificate in all courts and before all persons acting judicially.

New s. 63 inserted by No. 73/2012 s. 54.

63 Orders in Council

(1) The Governor in Council may make Orders for or with respect to—

S. 63(1)(a) amended by No. 69/2015 s. 111.

(a) fixing the number of members of the Council or the number of government appointed members and Council appointed members of the Council for the purposes of section 11;

(b) the method of calculating the terms of office of government appointed members and Council appointed members so that their terms of office do not fall vacant in the same year;

Note

This method will override clause 1(2) of Schedule 1.

(c) making transitional provisions including—

(i) application or saving provisions about the Council or the membership of the Council arising from any change of membership of the Council as the result of the making of an Order in Council under paragraph (a); and

(ii) provision for members to go out of office or to be appointed to an office on a change of membership as the result of the making of an Order in Council under paragraph (a).

(2) The Governor in Council must not make an Order under subsection (1) except on the recommendation of the Minister after the Minister has received a

request from the Council for the Order made by a resolution of the Council and passed by a two thirds majority of the current members of the Council.

(3) An Order in Council takes effect on the day specified in the Order in Council or, if no date is specified, on the day the Order in Council is published in the Government Gazette.

(4) A copy of every Order in Council under this section must be published in the Government Gazette as soon as practicable after it is made.

(5) A copy of every Order in Council made under this section must be laid before both Houses of Parliament on or before the 6th sitting day after the publication of the Order in accordance with subsection (4).

(6) Part 5A of the **Subordinate Legislation Act 1994** applies to an Order in Council under this section as if the Order in Council were a legislative instrument within the meaning of that Act laid before each House of the Parliament under section 16B of that Act.

Part 8—Repeals, consequential amendments and transitional matters

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Pt 8 Divs 1, 2 (Headings and ss 63–66) repealed by No. 78/2009 s. 78.

Division 3—Transitional provisions

67 Definitions for this Division

In this Division—

commencement date means the day on which section 63 comes into operation;

old Act means the **Melbourne University Act 1958**.

68 Operation of Interpretation of Legislation Act 1984

Unless the contrary intention expressly appears, this Division does not affect or take away from the **Interpretation of Legislation Act 1984**.

Note

See in particular sections 14 and 16 of the **Interpretation of Legislation Act 1984**.

69 University

(1) Subject to section 4, on and from the commencement date, the University is taken to be the same body as it was immediately before that

commencement, despite any changes to the constitution of the University and no decision, matter or thing is to be affected because of those changes.

(2) On and from the commencement date, all property vested in the University under the old Act, including all money standing immediately before that date to the credit of a fund or account of the University under the old Act and any other money belonging to the University as at that date may, after that date, be used or invested by the University in accordance with this Act.

70 Council

(1) On and from the commencement date, the Council—

(a) subject to paragraph (b), is taken to be the same body as it was immediately before that commencement, despite any changes to the constitution of the Council and no decision, matter or thing is to be affected because of those changes; and

(b) continues in existence as if established under Division 2 of Part 2.

(2) On and from the commencement date, all property vested in the Council under the old Act, including all money standing immediately before that date to the credit of a fund or account of the Council under the old Act and any other money belonging to the Council as at that date may, after that date, be

used or invested by the Council in accordance with this Act.

71 Members of Council

(1) On and from the commencement date, the members of the Council in office under the old Act immediately before that date, subject to subsection (2)—

(a) are taken to be the members of the Council appointed or elected in accordance with Part 2; and

(b) continue in office on the same terms and conditions as those on which they were originally appointed or elected for the remainder of their original terms as if appointed or elected, as the case requires, under this Act.

(2) A member of the Council referred to in subsection (1), other than a member elected by or from the students, whose term in office is due to cease—

(a) in December 2010 continues in office until 30 June 2011; and

(b) in December 2011 continues in office until 30 June 2012.

72 Affiliated colleges

On the commencement date, a college referred to in the definition of ***head of an affiliated college*** in section 3 of the old Act and in existence immediately before that date—

(a) is taken to be an ***affiliated college*** within the meaning of this Act established in accordance with

section 21 with the same name as it had before that date; and

(b) may continue its functions and operation in accordance with this Act.

73 Staff

(1) A person employed immediately before the commencement date by the Council in accordance with section 15 of the old Act continues to be employed under this Act, subject to the same terms and conditions as applied to that employment immediately before the commencement date.

(2) Nothing in subsection (1) prevents—

(a) any of the terms and conditions of employment of a person referred to in subsection (1) from being altered by or under any law, award or agreement or under this Act, the university statutes or university regulations with effect from any time after the commencement date; or

(b) a person referred to in subsection (1) from resigning or being dismissed at any time after the commencement date in accordance with the then existing terms and conditions of his or her employment.

74 Construction of references

On and from the commencement date, in any Act (other than this Act), or in any subordinate instrument made

under any Act or in any other document of any kind, unless the context otherwise requires—

(a) a reference to the **Melbourne University Act 1958** is to be construed as a reference to the **University of Melbourne Act 2009**; and

(b) a reference to the Council constituted under the **Melbourne University Act 1958** is to be construed as a reference to the Council constituted under section 8; and

(c) a reference to statutes of the University or regulations of the University made under the **Melbourne University Act 1958** is to be construed as a reference, as the case requires, to—

(i) the university statutes; or

(ii) the university regulations.

75 Gifts, trusts and other dispositions

(1) This section applies to—

(a) a gift, disposition or trust of property or a trust fund to which Division 3 of Part II of the old Act applied immediately before the commencement date; or

(b) a gift, disposition or trust of property or a trust fund—

(i) made or declared, or deemed to have been made or declared, or created (as the case

requires) before, on or after the commencement date, by deed, will or otherwise, to, in favour of, for the use of, or for the purposes of the University as established under the old Act; and

(ii) which takes effect, or may take effect, or, in the case of a trust fund may be applied, on or after the commencement date.

(2) A gift, disposition, trust or trust fund to which this section applies does not fail only because of the repeal of the old Act but, in relation to any other matter occurring on or after the commencement date—

(a) in the case of a gift, disposition or trust of property, takes effect as if made or declared to, or in favour of, the University for a purpose of the University that corresponds with, or is similar to, the purposes for which it was made or declared; or

(b) in the case of a trust fund, may be applied as if created in favour of the University for a purpose of the University that corresponds with, or is similar to, the purposes for which the fund was created.

76 University statutes and university regulations

On and from the commencement date, any statute of the University or regulation of the University made

under the old Act and in force as at that date—

(a) is taken to be a university statute or university regulation made under this Act, as the case requires; and

(b) may be amended or revoked in accordance with this Act.

77 Regulations dealing with transitional matters

(1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including the repeals and amendments made by this Act.

(2) Regulations made under this section may—

(a) have a retrospective effect to a day on or from the date that this Act receives the Royal Assent; and

(b) be of limited or general application; and

(c) leave any matter or thing to be decided by a specified person or class of persons; and

(d) provide for the exemption of persons or matters or a class of persons or matters from any of the regulations made under this section.

(3) Regulations under this section have effect despite anything to the contrary

in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.

Pt 8 Div. 4 (Heading and s. 78) substituted as Pt 8 Div. 4 (Heading and ss 78–82) by No. 73/2012 s. 55.

Division 4—Further transitional provisions

S. 78 substituted by No. 73/2012 s. 55.

78 Definition for this Division

In this Division—

commencement day means the day on which Part 6 of the **Education Legislation Amendment (Governance) Act 2012** comes into operation.

S. 79 inserted by No. 73/2012 s. 55.

79 Operation of Interpretation of Legislation Act 1984

Unless the contrary intention expressly appears, this Division does not affect or take away from the **Interpretation of Legislation Act 1984**.

Note

See in particular section 16 of the **Interpretation of Legislation Act 1984**.

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S. 80 inserted by No. 73/2012 s. 55, repealed by No. 69/2015 s. 112.

S. 81 inserted by No. 73/2012 s. 55.

81 Saving of reconstituted Council

(1) On and from the commencement day, the Council—

(a) continues in existence as if established under Division 2 of Part 2; and

(b) is taken to be the same body as it was immediately before that day, despite any changes to the constitution of the Council and no decision, matter or thing is to be affected because of those changes.

(2) On and from the commencement day of an Order in Council under section 63, the Council—

(a) continues in existence as if established under Division 2 of Part 2; and

(b) is taken to be the same body as it was immediately before that day, despite any changes to the constitution of the Council and no decision, matter or thing is to be affected because of those changes.

S. 82 inserted by No. 73/2012 s. 55.

82 Members of Council

(1) On and from the commencement day, the members of the Council in office under section 11 immediately before that day except elected members—

(a) are taken to be the members of the Council appointed in accordance with section 80; and

(b) continue in office on the same terms and conditions as those on which they were originally appointed for the remainder of their original terms as if appointed under this Act.

S. 82(2) repealed by No. 69/2015 s. 113.

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Pt 8 Div. 5 (Heading and s. 83) inserted by No. 69/2015 s. 114.

Division 5—Further transitional provisions

S. 83 inserted by No. 69/2015 s. 114.

83 Transitional provisions—Education Legislation Amendment (TAFE and University Governance Reform) Act 2015

(1) Despite the commencement of Part 4 of the amending Act, the Council is not

required to include elected members until 6 months after the commencement day.

(2) The University must ensure that elections are held to elect the required number of elected members within 6 months after the commencement day.

(3) Despite the commencement of Part 4 of the amending Act—

(a) the Council may consist of 11 or 12 members until 6 months after the commencement day; and

(b) the Council may consist of more than 21 members until 31 December in the second year next following the year in which elections are first held in accordance with subsection (2).

(4) On and from the commencement day—

(a) the Council is taken to be the same body despite the changes to its constitution made by Part 4 of the amending Act and no decision, matter or thing is affected by those changes; and

(b) the members of the Council in office immediately before the commencement day continue in office, subject to this Act, on the same terms and conditions on which they held office immediately before the commencement day for the remainder of their current terms of office.

(5) In this section—

amending Act means the **Education Legislation Amendment (TAFE and University Governance Reform) Act 2015**;

commencement day means the day on which Part 4 of the amending Act comes into operation.

Pt 8 Div. 6 (Heading and s. 84) inserted by No. 31/2018 s. 92.

Division 6—Further transitional provisions

S. 84 inserted by No. 31/2018 s. 92.

84 Transitional provision—Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Act 2018

(1) Clause 1(1)(a) and (b) of Schedule 1 as substituted by Part 6 of the amending Act apply only to a government appointed member or Council appointed member appointed on or after the commencement day.

(2) In this section—

amending Act means the **Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Act 2018**;

commencement day means the day on which Part 6 of the amending Act comes into operation.

Schedule 1—Membership and procedure of the Council

Section 17

1 Terms and conditions of office of Council members

Sch. 1 cl. 1(1) amended by No. 73/2012 s. 57(1).

(1) Subject to this Act, including an Order in Council made under section 63—

Sch. 1 cl. 1(1)(a) amended by No. 73/2012 s. 58(1), substituted by No. 31/2018 s. 93(1).

(a) a government appointed member holds office for the term, not exceeding 3 years, specified in the member's instrument of appointment;

Sch. 1 cl. 1(1)(b) amended by Nos 73/2012 s. 58(2)(b), 69/2015 s. 115(a), substituted by No. 31/2018 s. 93(2).

(b) a Council appointed member holds office for the term, not exceeding 3 years, specified in the member's instrument of appointment;

Sch. 1 cl. 1(1)(c) repealed by No. 73/2012 s. 58(2)(a), new Sch. 1 cl. 1(1)(c) inserted by No. 69/2015 s. 115(b).

(c) an elected member elected by staff of the University holds office for a term, not exceeding 3 years, fixed by the Council in accordance with the university statutes and any university regulations;

(d) an elected member elected by students of the University holds office for a term, not exceeding 2 years, fixed by the Council in accordance with the university statutes and any university regulations.

Sch. 1 cl. 1(1)(d) repealed by No. 73/2012 s. 58(2)(a), new Sch. 1 cl. 1(1)(d) inserted by No. 69/2015 s. 115(b).

Sch. 1 cl. 1(2) amended by Nos 71/2010 s. 71(Sch. item 7.3), 73/2012 s. 58(1), repealed by No. 31/2018 s. 93(3).

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Sch. 1 cl. 1(3) inserted by No. 73/2012 s. 57(2), repealed by No. 31/2018 s. 93(3).

* * * * *

2 Members eligible for reappointment

Sch. 1 cl. 2(1) amended by Nos 73/2012 s. 58(2)(c), 69/2015 s. 116.

(1) A member of the Council is eligible to be re-appointed or re-elected to the Council at the end of the member's term of office, if the member's period in office does not exceed 12 years of membership, whether consecutive or not.

(2) Subclause (1) does not apply to a member of the Council whose membership exceeds 12 years if the Council passes a resolution that the

person may continue to be a member beyond that period.

3 Council's power of removal

(1) The Council may remove a member from office in accordance with this clause.

(2) The Council may only remove a member from office if it is of the opinion that the member has failed to comply with the responsibilities of a member of the Council.

(3) The Council must not remove a member from office unless—

(a) another member gives notice at an ordinary meeting of the Council of an intention to move a motion for the member to be removed from the Council and sets out in the notice the grounds for removal; and

(b) the member gives that notice no later than at the last ordinary meeting of the Council before the meeting at which the motion to remove the member will be put to the Council; and

(c) if the member to be removed is not present at the meeting at which that notice is given, the Council gives the member written notice of the intention and sets out in the

notice the grounds for removal; and

(d) the Council gives the member to be removed an opportunity, at or before the meeting where the motion for removal is to be considered, to make submissions in writing or personally before the Council of the reasons why the member should not be removed from the Council; and

(e) by a majority of two-thirds of the members present at the meeting, the Council passes a resolution removing the member from office on the grounds stated in the notice given under this clause.

4 Vacancies in membership of Council

(1) A member's office becomes vacant—

(a) on the expiry of his or her term of office; or

(b) if he or she resigns from office; or

(c) if he or she is removed from office; or

(d) if he or she is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or

(e) if he or she becomes an insolvent under administration; or

(f) if he or she is or becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act; or

(g) if he or she ceases to be eligible for the category of member for which the member was elected or appointed; or

(h) if he or she is elected as a member of the Parliament of Victoria or of the Commonwealth or of any other State or Territory; or

(i) if he or she has failed to attend 3 consecutive ordinary meetings of the Council, without the Council's prior approval.

(2) If a member of the Council becomes entitled to be a member ex officio—

(a) that member is deemed to hold office ex officio; and

(b) the vacated office of that member must be filled in the manner set out for the filling of casual vacancies.

Sch. 1 cl. 4A inserted by No. 39/2012 s. 56.

4A Leave of Absence

(1) The Council may, in accordance with this Schedule, grant to or approve for a member of the Council such leave of absence as the Council determines and subject to such terms and conditions as the Council determines.

Sch. 1 cl. 4A(2) amended by No. 73/2012 s. 58(1).

(2) The Council may grant a government appointed member of the Council leave of absence for a period not exceeding 3 months.

Sch. 1 cl. 4A(3) amended by No. 73/2012 s. 58(1).

(3) The Council, with the prior approval of the Minister, may grant a government appointed member of the Council leave of absence for a period not exceeding 12 months.

Notes

1 Clause 4(1)(i) refers to leave of absence from ordinary meetings of the Council.

2 Section 41 of the **Interpretation of Legislation Act 1984** provides for the appointment of a person to act in place of the holder of an office if the holder of the office is absent or unable to act.

Sch. 1 cl. 4B inserted by No. 39/2012 s. 56.

4B Terms and conditions of appointment of acting members

The Minister may determine the terms and conditions of appointment of an acting member of the Council including remuneration and fees (if any) to be paid to the acting member.

Sch. 1 cl. 4C inserted by No. 39/2012 s. 56.

4C Operation of Interpretation of Legislation Act 1984

Unless the contrary intention expressly appears, this Schedule does not affect or take away from section 41 of the **Interpretation of Legislation Act 1984**.

Sch. 1 cl. 5 amended by Nos. 73/2012 s. 58(2)(d), 69/2015 s. 117.

5 Filling of vacancies on retirement

The appointment or election of a person as a member of the Council to fill a vacancy caused by the retirement of a member at the end of a term of office—

(a) except in the case of Council appointed members, may be made within 6 months before the date of the end of the term of office of the

retiring member and takes effect at the end of that term of office; and

(b) in the case of Council appointed members, must be made on or before the last scheduled meeting of the Council before the end of the term of office of the retiring member.

Sch. 1 cl. 6 repealed by No. 73/2012 s. 58(2)(e), new Sch. 1 cl. 6 inserted by No. 69/2015 s. 118.

6 Conduct of elections

Elections of members of the Council are to be conducted in accordance with the requirements of this Act and the university statutes and any university regulations.

Sch. 1 cl. 7 repealed by No. 73/2012 s. 58(2)(e), new Sch. 1 cl. 7 inserted by No. 69/2015 s. 118.

7 Elected member vacancies taken to be casual vacancies

(1) This clause applies if—

(a) at any election for elected members of the Council—

(i) no vacancies are filled; or

(ii) a number of vacancies less than the whole number which should have been filled is filled; or

(b) an election for elected members of the Council to fill vacancies should have been held but is not held.

(2) The vacancies referred to in subclause (1) which should have been filled and

are not filled are taken to be casual vacancies.

(3) A member of Council eventually elected to fill a casual vacancy referred to in subclause (1) is entitled to continue in office as if elected at an election referred to in that subclause.

8 Filling of casual vacancies generally

Sch. 1 cl. 8(1) amended by No. 73/2012 s. 58(1)(2)(f)(g), substituted by No. 69/2015 s. 119(1).

(1) A casual vacancy in the office of an elected member, a government appointed member or a Council appointed member must be filled by the election or appointment, as the case requires, of a member to fill the vacancy.

Sch. 1 cl. 8(2) amended by No. 73/2012 s. 58(2)(h), substituted by No. 69/2015 s. 119(2), amended by No. 31/2018 s. 94(1).

(2) A person who is to be elected as a member of the Council must have the like eligibility or qualification (if any) as that of the member whose office has become vacant.

Sch. 1 cl. 8(3) amended by No. 73/2012 s. 58(2)(g)(i), substituted by No. 69/2015 s. 119(3).

(3) Subject to clause 9, the election or appointment must be made by the person or body of persons who or which elected or appointed, as the case requires, the member whose office has become vacant.

Sch. 1 cl. 8(4) amended by Nos 73/2012 s. 58(2)(h), 69/2015 s. 119(4), 31/2018 s. 94(2).

(4) Subject to this Act, a member elected to fill a casual vacancy is entitled to hold office during the remainder of the term of the member whose office the new member fills.

Sch. 1 cl. 8(4A) inserted by No. 31/2018 s. 94(3).

(4A) Subject to this Act, a government appointed member or a Council appointed member who has been appointed to fill a casual vacancy is entitled to hold office for the term, not exceeding 3 years, specified in the member's instrument of appointment.

Sch. 1 cl. 8(5) amended by No. 73/2012 s. 58(1)(2)(f), substituted by No. 69/2015 s. 119(5), amended by No. 31/2018 s. 94(4).

(5) Despite subclauses (4) and (4A), it is not obligatory to fill a casual vacancy for the remainder of the term if—

(a) in the case of a government appointed member or a Council appointed member, the vacancy occurs within 3 months before the expiry of the term of office;

(b) in the case of an elected member, the vacancy occurs within 6 months before the expiry of the term of office.

9 Interim Ministerial appointments

Sch. 1 cl. 9(1) amended by No. 73/2012 s. 58(1).

(1) Despite section 12 and clause 8, after consultation with the Chancellor, the Minister may make an interim appointment of a person to a vacancy in the office of a government appointed member.

(2) An interim appointment under subclause (1)—

(a) is made by order published in the Government Gazette; and

(b) is for the period specified in the order, being a period not exceeding 6 months; and

(c) may be made despite the requirements of section 12.

10 Chairperson

At every meeting of the Council—

(a) the Chancellor or, in his or her absence, a deputy chancellor elected by the meeting, is to preside as chairperson; and

Sch. 1 cl. 10(b) amended by No. 69/2015 s. 120.

(b) in the absence of the Chancellor and a deputy chancellor, the members of the Council present must elect a government appointed member or Council appointed member as chairperson.

11 Declaration of interests of Council members

(1) A member of the Council who has an interest in a matter being considered or about to be considered by the Council must, as soon as practicable after the relevant facts have come to his or her knowledge, declare the nature of the interest—

(a) at a meeting of the Council; or

(b) in writing addressed to the Chancellor.

(2) If the Chancellor receives a written declaration under subclause (1), the Chancellor must report it or cause it to be reported, at the next meeting of the Council.

(3) The person presiding at a meeting at which a declaration is made under subclause (1) or reported under subclause (2) must cause a record of the declaration to be made in the minutes of the meeting.

(4) After a declaration is made under subclause (1) by a member of the Council—

(a) unless the Council otherwise directs, the member must not be present during any deliberation with respect to that matter; and

(b) the member is not entitled to vote on the matter; and

(c) if the member does vote on the matter, the vote must be disallowed .

12 How questions are to be decided and quorum

Sch. 1 cl. 12(1) substituted by No. 73/2012 s. 59.

(1) No question must be decided at any meeting of the Council unless there is a quorum of at least the majority of members holding office for the time being other than a member who is on leave of absence granted under clause 4A.

(2) Subject to any university statute made under subclause (3), all questions

which come before any meeting of the Council must be decided by the majority of the members present.

(3) Subject to there being a quorum as required by subclause (1), the Council, by university statute, may provide that certain resolutions, or resolutions of certain classes, have effect only if passed by a specified majority of members or of members present and voting.

(4) The Chairperson at any meeting has—

(a) a vote; and

(b) in case of an equality of votes, a casting vote.

(5) Subject to this Act, the university statutes and the university regulations, the Council may regulate its own proceedings.

13 Resolutions without meetings of the Council

(1) If a majority of the members for the time being of the Council sign a document circulated by, or on behalf of, the Chancellor containing a statement that those members are in favour of a resolution in terms set out in the document, a resolution in those terms must be taken to have been passed at a meeting of the Council—

(a) held on the day on which the document is signed; or

(b) if the members do not sign it on the same day, on the day on which

the last member to sign signs the document.

(2) If a resolution is taken to have been passed at a meeting of the Council under subclause (1), each member must—

(a) be advised as soon as practicable; and

(b) be given a copy of the terms of the resolution.

(3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is to be taken to constitute one document.

(4) In this clause, ***member***, in relation to a resolution, does not include a member who, by reason of clause 11, is not permitted to vote on the resolution.

14 Approved methods of communication for Council meetings

(1) If not less than two-thirds of the members of the Council so agree, a meeting of the Council may be held by means of a method of communication, or by means of a combination of methods of communication, approved by the Chancellor for the purposes of that meeting.

(2) For the purposes of this Schedule, a member of the Council who

participates in a meeting held in accordance with subclause (1) is present at the meeting even if he or she is not physically present at the same place as another member participating in the meeting.

(3) In this clause, ***meeting*** includes a part of a meeting.

15 Committees and delegation of powers

(1) The Council, by resolution, may constitute and appoint any committees as it thinks fit.

(2) At least one-third of the members of any committee must be members of the Council.

(3) The Council, by resolution, may delegate to any committee or to any member of a committee all or any of its powers, authorities, duties and functions other than—

(a) this power of delegation; and

(b) the power to make university statutes and, except in accordance with section 30, university regulations.

(4) A delegation under this clause is revocable by resolution of the Council.

Note

See also sections 42 and 42A of the **Interpretation of Legislation Act 1984**.

16 Validation of acts or decisions despite vacancy or disqualification

(1) An act or decision of the Council or a committee of the Council is not invalid merely because of—

Sch. 1 cl. 16(1)(a) amended by Nos 73/2012 s. 60, 69/2015 s. 121(1)(a).

(a) a defect or irregularity in, or in connection with, the appointment or election of a member of the Council; or

Sch. 1 cl. 16(1)(b) amended by No. 69/2015 s. 121(1)(b).

(b) a vacancy in the membership of the Council, including a vacancy arising from the failure to appoint or elect a member of the Council.

(2) Anything done by or in relation to a person purporting to act as Chairperson, a member of the Council or on a committee is not invalid merely because—

Sch. 1 cl. 16(2)(a) amended by Nos 73/2012 s. 60, 69/2015 s. 121(2).

(a) the occasion for the appointment or election had not arisen; or

Sch. 1 cl. 16(2)(b) amended by Nos 73/2012 s. 60, 69/2015 s. 121(2).

(b) there was a defect or irregularity in, or in connection with, the appointment or election; or

Sch. 1 cl. 16(2)(c) amended by Nos 73/2012 s. 60, 69/2015 s. 121(2).

(c) the appointment or election had ceased to have effect.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current Versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 17 September 2009

Legislative Council: 15 October 2009

The long title for the Bill for this Act was "A Bill for an Act to re-enact with amendments the law relating to The University of Melbourne, to repeal the **Melbourne University Act 1958** and other Acts, to make consequential amendments to other Acts and for other purposes."

The **University of Melbourne Act 2009** was assented to on 1 December 2009 and came into operation on 1 July 2010: Government Gazette 24 June 2010 page 1273.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act.

This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act.
See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **University of Melbourne Act 2009** by Acts and subordinate instruments.

University of Melbourne Act 2009, No. 78/2009

Assent Date:	1.12.09
Commencement Date:	S. 78 on 1.1.12: s. 78
Current State:	This information relates only to the provision/s amending the **University of Melbourne Act 2009**

Education and Training Reform Amendment (Skills) Act 2010, No. 71/2010

Assent Date:	19.10.10
Commencement Date:	S. 71(Sch. item 7) on 1.4.11: Special Gazette (No. 102) 29.3.11 p. 1
Current State:	This information relates only to the provision/s amending the **University of Melbourne Act 2009**

Education Legislation Amendment (VET Sector, Universities and Other Matters) Act 2012, No. 39/2012

Assent Date:	27.6.12
Commencement Date:	Ss 55, 56 on 27.6.12: s. 2(1)
Current State:	This information relates only to the provision/s amending the **University of Melbourne Act 2009**

Education Legislation Amendment (Governance) Act 2012, No. 73/2012

Assent Date:	4.12.12
Commencement Date:	Ss 52–60 on 1.1.13: s. 2(3)
Current State:	This information relates only to the provision/s amending the **University of Melbourne Act 2009**

Education Legislation Amendment (TAFE and University Governance Reform) Act 2015, No. 69/2015

Assent Date:	15.12.15
Commencement Date:	Ss 107–121 on 1.1.16: Special Gazette (No. 403) 15.12.15 p.1
Current State:	This information relates only to the provision/s amending the **University of Melbourne Act 2009**

Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Act 2018, No. 31/2018

Assent Date:	7.8.18
Commencement Date:	Ss 92–94 on 15.10.18: Special Gazette (No. 466) 10.10.18 p. 1
Current State:	This information relates only to the provision/s amending the **University of Melbourne Act 2009**

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3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.